

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the matter of:	)	
	)	
Digital Audio Broadcasting Systems	)	
And Their Impact on the Terrestrial	)	MM Docket No. 99-325
Radio Broadcast Service	)	

**Comments of Charles J. Mohnkern for Mohnkern Electronics, Inc.**

The following comments are filed in reply to the Federal Communications Commission's Further Notice of Proposed Rulemaking and Notice of Inquiry released April 20, 2004, and various other's comments in this proceeding as noted, on behalf of Mohnkern Electronics, Inc., licensee of Class D AM station KPYK in Terrell, Texas. As a small market broadcaster, we have grave concern regarding the use of certain patents, the problem of adjacent channel interference, and Digital Audio Content Control.

**Patents**

The Commission states in paragraph 57 of its Further Notice of Proposed Rulemaking and Notice of Inquiry that:

"...many parties stated that adoption of iBiquity's IBOC system would require the use of certain patented technologies. They expressed concern that the Commission's endorsement of the iBiquity system will create an opportunity for these patent holders to impose excessive licensing fees on broadcasters and listeners who have no alternative source for the technology. In response, iBiquity agreed to abide by the guidelines common to open standards, which require that licenses be available to all parties on fair terms. iBiquity also stated it would adhere to the Commission's patent policy."

While a promise to abide by the guidelines common to open standards is laudable, without proper regulatory controls in place, iBiquity would face no challenge to later imposing onerous fees when greed has replaced honor, or a need for cash arises and iBiquity sees this as a lucrative alternative. If the Commission adopts iBiquity's IBOC system, requiring all stations to convert, small market and small-business station owners will be at the mercy of the one and only source of the system to which they must convert. This one source, iBiquity, who's investors include large media groups and equipment manufacturers, will have a Commission sanctioned monopoly with the potential of wielding unprecedented power over, and control of, the market. Historically, this country has viewed such monopolistic control as undesirable and as an impediment to commerce. Therefore, there was a need for the passage and

subsequent enforcement of the Sherman Anti-Trust Act of 1890, and the continuing need for the Antitrust Division of the U. S. Department of Justice. We feel the Commission should carefully consider all IBOC system alternatives, and allow marketplace forces to determine the outcome. Or, if iBiquity's IBOC system, currently the *de facto* standard for interim digital operation, is adopted as the standard when the permanent regulatory framework for IBOC is adopted, regulations should be in place at the time of adoption binding iBiquity to abide by the Open Standards Principles and Practices as defined by Bruce Perens, Treasurer of the Open Source Initiative. Mr. Perens states in a document titled "Open Standards: Principles and Practice" at <http://perens.com/OpenStandards/Definitions.html>: "An Open Standard is more than just a specification. The principles behind the standard, and the practice of offering and operating the standard, are what make the standard Open." There are six Open Standards Principles, two of which I will mention here. Principle number two, "Maximize End-User Choice" states "Open Standards create a fair, competitive market for implementation of the standard. They do not lock the customer in to a particular vendor or group." The third Principle, "No Royalty," states: "Open Standards are free for all to implement with no royalty or fee." Ongoing or large lump sum royalty payments or fees proposed initially by iBiquity will only serve to slow progress in the adoption of IBOC.

#### **Adjacent Channel Interference**

There appears to be no question there is interference caused by stations using the iBiquity IBOC system. In paragraph 43 of the Commission's Further Notice of Proposed Rulemaking and Notice of Inquiry, the Commission states:

"Because the IBOC digital signal shares spectrum with the analog signal of a first adjacent AM station... the NRSC concluded that first adjacent channel compatibility is a significant issue for IBOC. ...We therefore deferred authorizing nighttime use of AM IBOC until further testing has been completed."

iBiquity, in its July 14, 2004, Reply Comments Concerning Nighttime AM IBOC Service recognizes "IBOC has the potential to cause limited interference in certain circumstances." Concerning solutions to interference problems, iBiquity says:

iBiquity remains confident that the rules for daytime AM service, when combined with the Commission's existing complaint procedures, will more than adequately address interference that may arise from nighttime IBOC broadcasts. Broadcasters should be encouraged to work together to resolve interference and should be granted flexibility to reduce digital power to mitigate interference that may arise. The Commission maintains authority to address unresolved instances of interference without the need for the regulatory burdens associated with a prior notification procedure.

In reality, not all broadcasters are willing to work together to resolve interference problems, and resolution of such a problem may require a significant amount of time. KPYK suffered a severe interference problem in the mid 1990's which could not be resolved by cooperation between broadcasters. Owners of the station causing the interference refused to correct severe over-modulation causing objectionable interference to KPYK's signal within its 5 mv contour.

Throughout our attempts to obtain relief from this problem, first by working "together to resolve interference" followed by utilizing the Commission's existing complaint procedures, the interference persisted for eighteen months causing substantial economic loss to KPYK.

The potential interference problem from the implementation of IBOC must be approached proactively, assuring the potential of interference is minimal or non-existent prior to a station implementing IBOC. A station subjected to interference from an adjacent station using IBOC should not be required to accept interference within its protected contour while defending its right to broadcast without interference per the Commission's rules.

The concern over interference is not limited to nighttime operation. Don Mussell, a Broadcast Consulting Engineer with over 35 years of experience, stated in comments in this proceeding dated June 14, 2004, "...the addition of the IBOC signal produces sideband noise that is receivable on every currently available receiver." Paul Dean Ford, P. E., noted, also in comments in the proceeding, "While invention and progress are always to be commended, we must never forget that the Laws of Physics cannot be changed, only accomodated." There is also concern over possible violation of bilateral treaties with Canada and Mexico, as submitted in Reply Comments of Barry D. McLarnon, P. Eng., in Ottawa, Ontario, Canada. This possible violation is also explained in detail in "A Look at the Digital Horizon," an article by Mr. McLarnon in the July, 2004, edition of "Radio Guide."

Interference by stations implementing IBOC is a reality. The NRSC recognizes this as a "significant concern," and iBiquity admits there will be interference, however, minimal. We should all recognize iBiquity is a commercial venture with a product to sell. Therefore, like any good salesman should, they will present this product in the best possible light. It is for these reasons Mohnkern Electronics, Inc. encourages the Commission not to yeild to the pressure exerted by iBiquity and its investors, and proceed cautiously in this decision. The economic impact of this interference and the resulting reduced service area for a station

subjected to this interference should be studied by an independent third party and the resulting data considered by the Commission prior to any further implementation of IBOC.

### **Digital Audio Content Control**

While the RIAA expressed concern over possible recording and redistribution of digital broadcasts, the point raised in Comments of American Federation of Musicians, American Federation of Television and Radio Artists, and Future of Music Coalition on June 16, 2004, and the Comments of The Recording Artists' Coalition published in the August 1, 2004 edition of "Radio World," amounts to an argument to impose additional royalties for music broadcast in digital format. The American Federation of Musicians, AFTRA, and Future of Music Coalition said:

Because of a grave injustice in US law, broadcasters are allowed to build their business by selling to advertisers the fans that our recordings attract, and yet the broadcasters do not pay compensation for broadcasting the recording.

The Recording Artists' Coalition wrote:

Recording artists have fared badly under the existing analog radio system. Using the faulty rationale that analog radio provides recording artists with free publicity, Congress has steadfastly refused to provide recording artists with a public performance royalty -- the recording artist receives nothing.

While it is true that the recording artist does not receive compensation when a song is played, broadcasters do pay royalties through blanket licenses with ASCAP, BMI, and SESAC to the songwriter(s). Their argument fails to recognize the "mutual benefit" which Congress has recognized and wisely enacted into law. There is, in fact, a value to the recording artist in the playing of music over the air. Without exposure to a performer's work, there would be no demand. This exposure can be through public performances, radio or television. Public performance is limited by the artist's own physical limitations, and therefore cannot create the widespread exposure available through broadcast media. They fail to consider the commercial value of the time devoted to the repeated play of a song over the air, and the amount of money required to receive a comparable amount of commercial exposure. Congress has recognized this exposure does have value in resulting record sales, for which the performing artist does receive a royalty. If their concern is actually with the digital distribution of music over the internet, as both commenters imply, then their primary concern should be limitations imposed where the violations of their rights actually occur.

While we are not opposed to some form of encryption to restrict *illegal* duplication and distribution of copyrighted material, we feel their true motivation must be recognized. That apparent

motivation being greed. These organizations, under the guise of concern over digital duplication and distribution of their copyrighted works, used this proceeding to make this point concerning recording artists' royalties, attempting to influence opinion on this matter while ignoring the value of increased demand for their work from broadcast exposure.

### **Summary**

While we support improvement of the AM broadcast band, and look forward to the implementation of some form of IBOC, we cannot support further implementation of iBiquity's AM IBOC solution in light of its many unresolved problems. Let us not rush head-strong into implementing this technology on the misguided premise that accepting interference is an equitable trade for digital audio. The result may well be an interference-ridden AM band to which no one will choose to listen. We must be sure the route taken to improve the AM band is truly an improvement and beneficial to all concerned. As for the need of further rulemaking concerning digital audio content control and the attempt to influence opinion on the imposition of additional royalties, the true motivations and goals of those requesting this must be recognized.

Respectfully submitted,

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